

This is a claim for a June 12, 1996 accidental injury to the mid and upper back. Claimant requests payment of outstanding medical expense in the sum of \$1,937.84 and permanent partial general disability benefits based upon his functional impairment rating. The Judge found that claimant had failed to prove that the medical charges were reasonable and necessary, citing two reasons: (1) the medical services provided on July 8, 1996, included treatment for the lumbar spine, and (2) claimant sought emergency room treatment on September 17, 1996, which was three months after the accident. Therefore, the Judge denied the request for payment of the outstanding medical expense.



Further, persuaded by the opinion of the court appointed physician, the Judge denied claimant's request for permanent partial general disability benefits.

Claimant appealed to the Board contending that the outstanding medical charges should be considered as authorized because the respondent allegedly either neglected or refused to provide appropriate treatment. Also, claimant contends the opinions of Dr. Nathan Shechter have established a permanent functional impairment in the range of 5 to 10 percent.

Conversely, respondent and its insurance carrier contend that claimant failed to prove that he sustained any accidental injury and that all benefits should be denied.

The issues before the Board on this appeal are:

- (1) Did claimant sustain personal injury by accident arising out of and in the course of his employment with the respondent on June 12, 1996?
- (2) What is the nature and extent of claimant's injury and disability, if any?
- (3) Is claimant entitled to the payment of the outstanding medical charges as authorized medical expense?

#### **FINDINGS OF FACT**

After considering the entire record, the Appeals Board finds:

- (1) The Appeals Board affirms Judge Howard's finding that Mr. Davis sustained personal injury by accident arising out of and in the course of his employment with Conspec Marketing and Manufacturing Company on June 12, 1996. Mr. Davis' testimony is uncontroverted that one of his supervisors, whom he identified as Dale, was present when the incident occurred and helped him up. Later, Mr. Davis sought medical treatment for the symptoms that he experienced because of that accident.
- (2) Mr. Davis first sought medical treatment for back pain on June 19, 1996, when he went to the Providence Medical Center emergency room. The Medical Center charged \$1,351.80 for that visit, which included \$427 for x-rays of both knees and \$302.70 for unspecified services relating to the lumbar spine. Additionally, the statement includes charges of \$344.50 labeled as "thoracic spine". Mr. Davis agrees that his knees are not related to this claim.
- (3) Although he cannot recall the specific number of days, Mr. Davis believes he missed at least two days from work around June 19, 1996. When he returned to work, he presented a doctor's slip releasing him to work.



(4) Mr. Davis next sought medical treatment for his back on July 8, 1996, at the Bethany Medical Center emergency room. Those charges total \$672 and include \$206.75 for services relating to the lumbar spine. Additionally, the statement from Bethany shows \$231 for unspecified services related to the thoracic spine.

(5) Mr. Davis continued to work for Conspec until July 5, 1996. He quit because he was tired of working there. His quitting was not related to the accident.

(6) Mr. Davis testified that he only worked for two companies, National Compressed Steel and Door Step, after he left Conspec. But the job application form introduced at the Regular Hearing that Mr. Davis prepared on February 10, 1997, indicates that he also worked for two additional companies, D.J. Management and Golden Harvest, after he left Conspec. The application form shows that Mr. Davis worked as a forklift operator for Golden Harvest from May to September 1996 and as a carpenter for D.J. Management from September to December 1996.

(7) On September 17, 1996, Mr. Davis returned to the Providence Medical Center emergency room for treatment of his back complaints. The statement from that visit totals \$233.60 and shows charges of \$130.60 for the emergency room visit and \$103 for a professional fee.

(8) The following day, September 18, 1996, Mr. Davis sought treatment for his back at the KU Medical Center. The Medical Center billed Mr. Davis the total sum of \$107.44, which is comprised of \$16.44 from the pharmacy department and \$91 from the emergency room.

(9) Mr. Davis eventually obtained employment as an inspector for National Compressed Steel. Mr. Davis is limiting his claim for permanent partial general disability benefits to his functional impairment rating.

(10) At his attorney's request, in July 1997 Mr. Davis was examined by board certified orthopedic surgeon Nathan Shechter, M.D. Dr. Shechter found that Mr. Davis sustained soft tissue injuries to the thoracic region as a result of the June 1996 accident. Also, he found that Mr. Davis had a 5 to 10 percent functional impairment. But the doctor did not indicate whether that rating was formulated by using the American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA Guides).

(11) Judge Howard appointed orthopedic surgeon David A. Tillema, M.D., to evaluate Mr. Davis. In his report dated November 1997, Dr. Tillema indicates that Mr. Davis sustained only a temporary strain in his cervical thoracic area. And, according to the Fourth Edition of the AMA Guides, Mr. Davis has a 0 percent whole person functional impairment as there is a lack of significant clinical findings, as well as no muscle guarding, no neurological impairment, and no signs of any x-ray abnormality. Additionally, Dr. Tillema believes Mr. Davis does not have any work restrictions or limitations.



(12) The Appeals Board affirms the Judge's finding that Mr. Davis sustained only a temporary injury as a result of the June 1996 accident and that he has not sustained any permanent functional impairment as a result of that incident.

#### **CONCLUSIONS OF LAW**

(1) The Award should be modified as Conspec is responsible for paying Providence Medical Center the sum of \$344.50 and Bethany Medical Center the sum of \$342.75 for authorized medical benefits.

(2) Injured workers have the burden of proving their right to an award of compensation and the various conditions on which that right depends.<sup>1</sup>

(3) Because his is an "unscheduled" injury, K.S.A. 1996 Supp. 44-510e controls Mr. Davis' entitlement to permanent partial general disability benefits. That statute provides:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

(4) As indicated in the findings above, Mr. Davis is not seeking permanent partial general disability benefits greater than his functional impairment rating. And he has no functional impairment. Therefore, the request for permanent partial general disability benefits must be denied.

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<sup>1</sup>K.S.A. 1996 Supp. 44-501(a).



(5) An employer has the duty to provide medical services and treatment “as may be reasonably necessary to cure and relieve the employee from the effects of the injury.”<sup>2</sup> If the employer knows of the injury and refuses or neglects to reasonably provide services, the employer is liable for those services that the employee obtains.<sup>3</sup>

(6) The Judge found that Mr. Davis failed to prove that any of the medical expense that he incurred was reasonable and necessary to cure or relieve the effects of the June 12, 1996 accident. Neither Dr. Shecter nor Dr. Tillema addressed the issue in their medical reports. And no doctors were deposed.

(7) The Appeals Board finds that Mr. Davis’ visits to the hospital on both June 19 and July 8 were reasonably necessary to address the effects of the work-related accident. Nonetheless, both statements from those dates include charges that are identified as being related to something other than the alleged upper back injury. There is no evidence to link those other charges incurred on those two dates to the work-related injury. Therefore, only those services rendered on either June 19 or July 8, 1996, that appear to be related to the thoracic spine should be paid as part of this claim for authorized medical treatment. Those charges are:

- (1) From Providence Medical Center, the \$344.50 shown as being related to the thoracic spine; and
- (2) From Bethany Medical Center, the \$231 shown as being related to the thoracic spine and the \$111.75 charged for the emergency room visit.

(8) Mr. Davis also requests that the medical charges from September 17 and 18 be paid as authorized medical expense. That request is denied. As indicated in the findings above, according to one of his job applications, Mr. Davis was working for another employer when the need arose to seek additional medical treatment in September 1996. That fact creates the question of whether the need to seek treatment in September 1996 was related to the work activities at Conspec or the other employer. The Board finds that the record fails to establish that the September charges are related to the June 1996 accident.

(9) The Appeals Board adopts the Judge’s findings and conclusions to the extent they are not inconsistent with the above.

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<sup>2</sup>K.S.A. 44-510(a).

<sup>3</sup>K.S.A. 44-510(b).



**AWARD**

WHEREFORE, the Appeals Board modifies the September 17, 1998 Award as respondent and its insurance carrier are ordered to pay authorized medical expense in the sum of \$687.25. The Appeals board adopts the remaining orders set forth in the Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Alvin E. Witwer, Kansas City, KS  
Gary R. Terrill, Overland Park, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director